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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/542,109 | 03/31/2000 | Peter J. Kight | 3350-31G | 4187 |

7590 06/03/2003

Alfred A Stadnicki
Lalos & Keegan
1146 Nineteenth Street NW Fifth Floor
Washington, DC 20009

EXAMINER

GARG, YOGESH C

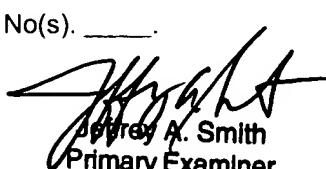
ART UNIT

PAPER NUMBER

3625

DATE MAILED: 06/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|---|--------------------------------------|-------------------------------------|
| Advisory Action | Application No. 09/542,109 | Applicant(s) KIGHT ET AL. |
| | Examiner Yogesh C Garg | Art Unit 3625 |
| <i>--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i> | | |
| <p>THE REPLY FILED 30 April 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.</p> | | |
| PERIOD FOR REPLY [check either a) or b)] | | |
| <p>a) <input type="checkbox"/> The period for reply expires _____ months from the mailing date of the final rejection.</p> <p>b) <input checked="" type="checkbox"/> The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.</p> <p>ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).</p> | | |
| <p>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p> | | |
| <p>1. <input type="checkbox"/> A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.</p> | | |
| <p>2. <input type="checkbox"/> The proposed amendment(s) will not be entered because:</p> | | |
| <p>(a) <input type="checkbox"/> they raise new issues that would require further consideration and/or search (see NOTE below);</p> | | |
| <p>(b) <input type="checkbox"/> they raise the issue of new matter (see Note below);</p> | | |
| <p>(c) <input type="checkbox"/> they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or</p> | | |
| <p>(d) <input type="checkbox"/> they present additional claims without canceling a corresponding number of finally rejected claims.</p> | | |
| <p>NOTE: _____.</p> | | |
| <p>3. <input checked="" type="checkbox"/> Applicant's reply has overcome the following rejection(s): <u>35 USC 101 rejection of claims 36, 38-40, and 42.</u></p> | | |
| <p>4. <input type="checkbox"/> Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</p> | | |
| <p>5. <input checked="" type="checkbox"/> The a)<input type="checkbox"/> affidavit, b)<input type="checkbox"/> exhibit, or c)<input checked="" type="checkbox"/> request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u></p> | | |
| <p>6. <input type="checkbox"/> The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.</p> | | |
| <p>7. <input checked="" type="checkbox"/> For purposes of Appeal, the proposed amendment(s) a)<input type="checkbox"/> will not be entered or b)<input type="checkbox"/> will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.</p> | | |
| <p>The status of the claim(s) is (or will be) as follows:</p> | | |
| <p>Claim(s) allowed: _____.</p> | | |
| <p>Claim(s) objected to: _____.</p> | | |
| <p>Claim(s) rejected: <u>36,38-40,42-44,46-48,50-56 and 58-61.</u></p> | | |
| <p>Claim(s) withdrawn from consideration: _____.</p> | | |
| <p>8. <input type="checkbox"/> The proposed drawing correction filed on _____ is a)<input type="checkbox"/> approved or b)<input type="checkbox"/> disapproved by the Examiner.</p> | | |
| <p>9. <input type="checkbox"/> Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.</p> | | |
| <p>10. <input type="checkbox"/> Other: _____.</p> | | |
|  Jeffrey A. Smith Primary Examiner | | |

Continuation of 5. does NOT place the application in condition for allowance because: . Other: With respect to the applicant's request for reconsideration, paper # 12, received on 4/30/2003 the applicant's arguments have been fully considered with regards to (i) denied claim for priority under 35 USC 120 to July 25, 1991 (ii) rejection of claims 36, 38-40, and 42 under 35 USC 101, and (111) rejection of claims 36, 38-39, 40,42-44,46-48, 50-56 and 58-61 under 35 USC 103 (a) and the examiner's comments are as follows:

A) Applicant's reply is not persuasive with regards to claim for priority under 35 USC 120 to July 25, 1991 and, therefore, the denial to priority claim to July 25, 1991, as analyzed and detailed in Final Action, paper # 11, is maintained. Notes: (i) With regards to the applicant's comments with respect to FIG.3 of the '072 patent and the unnumbered box labeled "rejects" (see pages 4, 5 of the response), this unnumbered box labeled "rejects" should be linked to the box "consumer pay table -38" because the validation process is done against the pay table. (ii) With regards to the applicant's comments with respect to excluding disclosure found at column 4, lines 37-41 of the '113 Patent (see pages 5 and 6 of the response) the inclusion of an incorporation-by-reference statement of the '113 patent does not cure the exclusion of the disclosure scope in the later application for '072 patent because the exclusion of the disclosure scope in the late application makes the breadth of scope indefinite as whether the software of the present invention is being used as per '113 patent or any other software is applicable as is apparent from the disclosure of the application for Patent '072.

B) Applicant's reply has overcome the rejection of claims 36, 38-40 and 42 under 35 USC 101.

C) With regards to the applicant's arguments (see response, pages 10-14) regarding claims 36,38, 39 the examiner respectfully does not agree as Braum/Paschal teaches the limitations of claims 36, 38, and 39 as analyzed in the final Office action, paper # 12. Also with regards to the applicant's arguments (see response, pages 14-15), the examiner respectfully does not agree as Lawlor/Case teaches the limitations of claim 40 as analyzed in the final Office action, paper # 12.